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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,277	05/27/2005	Yoshio Onoda	09610/0202789-US0	2231
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DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER WALKER, NED ANDREW	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 10/05/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,277	Applicant(s) ONODA, YOSHIO	
	Examiner NED A. WALKER	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Diaz (US Pat. No. 5,139,163).

Diaz discloses a cap (20) disposed around a lid of a container for canned drinks comprising: a seal face part (22) made as a film to expand and contract (column 3 lines 47-56) and covers a top face of said container for canned drinks; an outer-perimeter part (36) being an elastic material to expand and contract (column 3 lines 47-56 and col. 4, lines 37-44) and is disposed on an outer perimeter of said seal face part (FIGS. 1-2), said outer-perimeter part having a cross-sectional composition that is configured and arranged to couple with a recess below a seam part of said container (FIGS. 1-2, 5-6; column 4 lines 28-36); wherein an entire top face of said container for canned drinks is covered in a water-tight manner by said seal face by attaching said outer-perimeter part below a seam part of said container (top beaded seam shown in FIG. 2) thereby removably and replaceably self-sealing said cap to said container for canned drinks (column 4 lines 28-36; FIGS. 1-2, 6); wherein said outer-perimeter part (36) self-seals to said container by elastically engaging below the seam part of said container (column 4 lines 28-36; FIGS. 1-2, 6).

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claim 2 is rejected under 35 U.S.C. 103(a) as being obvious over Diaz (US Pat. No. 5,139,163) as applied to claim 1 above, in view of Deline (US Pat. No. 4,708,257).**

Regarding claim 2, Diaz, as applied to claim 1 above, teaches wherein: said seal face part and outer-perimeter part are made of at least one of polystyrene and polypropylene by injection molding as one unit; a thickness of said outer-perimeter part is equal to 0.5 mm or greater (column 3 lines 47-56).

Diaz does not disclose a thickness of said seal face part is equal to 0.4 mm or less; however, Deline teaches such a thickness (column 2 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use such a thickness for the seal face part so that the cover was thin enough and flexible

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enough to enable a user to grip the opening tab using the film as well as enable to user to easily fold or peel back the material when opening the lid or when the lid is not in use.

6. Claim 1, 19, and 20 are rejected under 35 U.S.C. 103(a) as being obvious over Diaz (US Pat. No. 5,139,163) as applied to claim 1 above, in view of Hardt (US Pat. No. 4,328,905).

Wherein in the Applicant may argue the anticipation of Diaz, the Examiner points to Diaz in view of Hardt as rendering the claims obvious.

Diaz discloses a cap (20) disposed around a lid of a container for canned drinks comprising: a seal face part (22) made as a film to expand and contract (column 3 lines 47-56) and covers a top face of said container for canned drinks; an outer-perimeter part (36) being an elastic material to expand and contract (column 3 lines 47-56 and col. 4, lines 37-44) and is disposed on an outer perimeter of said seal face part (FIGS. 1-2), wherein an entire top face of said container for canned drinks is covered in a water-tight manner by said seal face by attaching said outer-perimeter part below a seam part of said container (top beaded seam shown in FIG. 2) thereby removably and replaceably self-sealing said cap to said container for canned drinks (column 4 lines 28-36; FIGS. 1-2, 6).

Applicant may contest that Diaz does not anticipate that said outer-perimeter part having a cross-sectional composition that is configured and arranged to couple with a recess below a seam part of said container; wherein said outer-perimeter part self-seals to said container by elastically engaging below the seam part of said container; wherein said outer-perimeter part has a cross-sectional compositional shape that is hook-like.

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Hardt teaches that said outer-perimeter part having a cross-sectional composition that is configured and arranged to couple with a recess below a seam part of said container (FIG. 2); wherein said outer-perimeter part self-seals to said container by elastically engaging below the seam part of said container (column 1 lines 55-60; FIGS. 2); wherein said outer-perimeter part has a cross-sectional compositional shape that is hook-like (FIG. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a hook-like configuration for the attachment means to the can's lip since this type of press fit / frictional attachment means and corresponding structure is old and notoriously well known within the art.

Response to Arguments

7. Applicant's arguments, see amendment filed June 8th, 2009, with respect to the rejection of claims 1 and 19 under 35 USC §102(b) as being anticipated by Diaz (US Pat. No. 5,139,163) and the rejection of claim 2 under 35 U.S.C. 103(a) as being obvious over Diaz (US Pat. No. 5,139,163), in view of Deline (US Pat. No. 4,708,257), have been fully considered, but are not persuasive.

8. In response to Applicant's argument that Diaz fails to show "an outer-perimeter part being an elastic material to expand and contract and is disposed on an outer perimeter of said seal face part, said outer- perimeter part having a cross-sectional composition that is configured and arranged to couple with a recess below a seam part of said container", the Examiner maintains that this is sufficiently anticipated by Diaz in Figures 1-2, Figures 5-6, and column 4 lines 28-36. Diaz states:

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“In order to maintain a seal between the lid 22 of the cover 20 and the top of the can 26 gripping means are utilized consisting of an inner lip 36 the same basic shape of the lid of the can 26 except slightly smaller, permitting a snap fit on the can sufficient to maintain a firm grip when the cover lid 22 is gently forced on the can. The fit of the inner lip 36 to the can 26 permits repeated sealings without permanent deformation or elongation.”

The Examiner contends that the gripping means described herein inherently has a cross-sectional composition that is configured and arranged to couple with the recess below the seam of a container since the gripping means is smaller than the lid and snap fits onto the container. Furthermore, the Applicant has not provided a convincing argument nor has he provided any evidence as to why this would not be case.

9. For these reasons, the rejection of claims 1 and 19 under 35 USC §102(b) as being anticipated by Diaz (US Pat. No. 5,139,163) and the rejection of claim 2 under 35 U.S.C. 103(a) as being obvious over Diaz (US Pat. No. 5,139,163), in view of Deline (US Pat. No. 4,708,257), is hereby affirmed.

10. Nevertheless, new grounds for rejection have additionally been provided that render the remainder of the applicant's arguments moot.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781

NW